

Neutral Citation Number: [2004] EWCA Crim 1797
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2

Thursday, 1st July 2004

B E F O R E:

LORD JUSTICE KENNEDY

MR JUSTICE HENRIQUES

MR JUSTICE GROSS

R E G I N A

-v-

GURBINDER SINGH SAMRA

Computer Aided Transcript of the Stenograph Notes of
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(Official Shorthand Writers to the Court)

MR K GLEDHILL appeared on behalf of the APPELLANT
MR P PARKER QC appeared on behalf of the CROWN

J U D G M E N T Thursday, 1st July 2004

1. LORD JUSTICE KENNEDY: The conviction in this case has been referred to this court by the Criminal Cases Review Commission so that we can consider the safety of the conviction in the light of the additional medical evidence which is now available and which was not available when the appellant was tried at Stafford Crown Court in May 1995. He was charged with the murder of his wife, Kulvinder Kaur Samra, on 4th July 1994. For present purposes it is not necessary to go into the facts in any detail. We can summarise them by reference to the Commission's statement of reasons.
2. The appellant, who was born on 27th July 1971, was brought up in England, in the Midlands, as an orthodox Sikh in an orthodox Sikh family, and that led to certain tensions. Nevertheless he accepted his father's guidance and entered into an arranged marriage in India. His wife came to England, but there were problems with the marriage and she returned to India with their infant son. The appellant persuaded her to come back, but the stresses

remained, caused in part by the fact that his parents apparently favoured his wife rather than him and in part by her requirement that money be sent to her family in India. It was shortly after her return to England that she was killed. The appellant had been employed by his father's firm and had been dismissed, and before the killing the appellant's wife had been visiting his parents. She then went home to cook a meal, and soon after midnight she was seen running down the street towards the home of the appellant's parents, screaming and clad only in a towel with the appellant chasing her.

3. When he got up with her he caught her by her hair and pulled her. His mother then appeared on the doorstep with a ceremonial weapon (a barsa) seeking to rescue her daughter in law, but the appellant grabbed the weapon and used it to stab his wife, inflicting five wounds, two of which were fatal. He then calmly turned round and walked off.
4. He later claimed to have no recollection of that night's events, and said to a doctor that he did not know why he was in custody. On the other hand, his statements to the police did indicate how angry he was when his wife went off to his parents. He thought she was leaving him again. He also gave a full account of what had happened in his police interview which took place on 5th July 1994.
5. At trial the only live issue was provocation and the defendant wanted to call Dr Winton, a consultant psychiatrist, to say that when he killed his wife the appellant was suffering from an emotionally unstable personality disorder, known as "explosive personality disorder", which was not a mental illness. It was submitted on his behalf that the evidence was relevant to the issue of provocation, but the judge ruled otherwise.
6. Diminished responsibility was not an issue which was canvassed before the jury, for the very good reason that there was at that time no evidence available to the defence indicative of diminished responsibility. Dr Winton had expressly excluded it, and a report which had been obtained from Dr Bond had also been to the same effect.
7. After conviction the appellant sought leave to appeal on the sole ground that the evidence of Dr Winton should have been admitted. That was rejected by the full court on 8th March 1996.
8. The appellant then, on 10th July 1997, sought the assistance of the Criminal Cases Review Commission, which was initially not minded to refer the case to this court, but those acting for the appellant, on 1st November 1999, obtained a report from Dr Peter Pratt, a clinical psychologist. He concluded that the appellant was suffering from a personality disorder evidenced by his anger management difficulties, probable cocaine addiction and borderline learning difficulties, which together provided grounds for considering that his responsibility for the offence was substantially diminished.
9. The Commission then decided to seek a further opinion and Dr John Basson, a consultant forensic psychiatrist and Medical Director of Broadmoor Hospital, was instructed to examine and report on the appellant. His examination on 18th February 2000 concluded as follows:

"In my opinion there are enough factors in this man's case to argue that he should have been seen as diminished by the Court if all the psychological evidence had been fully aired. Some was unavailable (the homosexuality) but a lot was (explosive personality disorder, obsessive/compulsive disorder, learning disability). The cultural aspects of the case exacerbate it greatly."

Dr Basson believed that cocaine was taken on the day of the killing and could have significantly affected the appellant's mood on that day, and made the index offence more likely. In a letter of clarification dated 19th April 2000 Dr Basson said:

"... Mr Samra's responsibility for his actions with regard to the index offence was diminished by his arrested development both intellectually and emotionally. He is borderline learning disabled and this along with his emotional impairment significantly impairs his capacity to deal with charged situations.

He had an abnormal personality which corresponded to definition of personality disorder as detailed in ICD10 and DSM IV. This of itself is sufficiently, in my opinion, to be considered as diminished in responsibility at the time of the offence."

10. The appellant's condition appears not to have been fully and properly diagnosed at the time of the trial - that at least is the first conclusion of the Criminal Cases Review Commission. Its second conclusion was that had his condition been so diagnosed, the defence would have been in a position to submit that there was diminished responsibility.
11. The Commission having reached that position, the Crown Prosecution Service then made some enquiries of its own. It invited Dr Winton to comment on the reports of Dr Pratt and Dr Basson, and in a report dated 5th March 2001 Dr Winton maintained his original position.
12. Dr Basson saw the appellant again on 2nd March 2001 (after he had imprisoned a prison officer in December 2000). Dr Basson found him fit to plead and to stand trial, but in need of more detailed assessment.
13. On 24th May 2001 the appellant was seen by Dr Bendall, a consultant in forensic psychiatry (learning disability). He found a mild learning disability, but considered that the appellant "constitutes a grave and immediate danger to the general public", so that any assessment and treatment should be in a place of high security.
14. During the same period, between January and September 2001, Dr Josanne Holloway, Consultant Forensic Psychiatrist to the Home Office in the North West Regional Area Authority, had six interviews with the appellant. She was able to consider the records and all of the earlier reports, including some not at present before us. She found no current mental illness, but said that there was mild depressive illness at the time of the killing. However, her conclusion, in paragraph 5.3 of her report, reads as follows:

"I have not formally assessed his level of intelligence, however, this has been done by Dr Pratt and I have had the opportunity to review Mr Samra on several occasions. In my opinion, Mr Samra's level of functioning and the difficulties he has had in terms of maintaining employment for example cannot be definitely attributed to his level of intellectual functioning but are more likely to be due to his personality structure. Mr Samra's functioning during sessions with me and as measured on the WAIS by Dr Pratt, would almost certainly preclude him from having his needs met by community disability services. Mr Samra's level of intellectual ability and level of functioning would be too high for him to be dealt with by these services, ie he is too able for their services. In my opinion, he does not fulfil the criteria for the classification of Mental Impairment within the meaning of the Mental Health Act 1983. In my opinion,

in relation to the charge of murder his level of intellectual functioning is not sufficient to constitute an abnormality of mind, as defined by the Homicide Act."

15. Dr Bond then prepared a supplementary report for the Crown Prosecution Service dated 17th July 2002. He concluded that the appellant: first, does suffer from a severe personality disorder which can be regarded as an abnormality of mind for the purposes of the 1957 Act; secondly, that he suffers from a mild learning disability but probably not such as to constitute mental impairment within the meaning of the Mental Health Act 1983; and, thirdly, as to whether the abnormality of mind substantially impaired his mental responsibility for his acts and omissions in relation to the killing, Dr Bond says:

"This question is ultimately one for the Jury, although the psychiatric experts in this case including myself will be expected to express an opinion on this issue to the Court. My opinion on this issue has not changed in the light of this new evidence that Mr Samra's Personality Disorder is compounded by a learning difficulty. In my judgment, in spite of having a serious Personality Disorder and a learning disability Mr Samra was able at the material time to form a rational judgment whether an act was right or wrong, he had the ability to exercise will power to control physical acts in accordance with that rational judgment and he was capable of forming the intent to kill or seriously harm his wife. Therefore I have independently come to the same conclusion as Dr Holloway as expressed in Paragraph 5.7 of her report."

For present purposes, we do not need to trouble with Dr Bond's final paragraph.

16. Chronologically the last reports are those of another consultant psychiatrist, Dr David Wilson, dated 4th September 2002 and 4th June 2003. They deal mainly with the question of whether the appellant should come to this court, but Dr Wilson does say as to diminished responsibility that "he was suffering from an abnormality of mind in the broadest sense".
17. In this court the first matter which we have to address is whether to receive the evidence of Dr Pratt, Dr Basson and Dr Wilson. The situation is complicated by reason of the fact that, as Mr Gledhill has told us this morning, Dr Basson has gone to Australia, and if the appellant returns from where he is at present held in prison to Rampton, as is expected during the course of this month, he will not then be under the care of Dr Wilson, he will be under the care of someone who, as we understand it, has not so far reported upon him.
18. However, the application to the court to receive the reports which are before us and the evidence from those witnesses is not opposed by Mr Parker on behalf of the Crown, but the Crown would seek, if that evidence is placed before the court, for the court to receive also reports from Dr Winton, Dr Holloway and Dr Bond.
19. We are satisfied that, for the reasons we have given, the evidence now sought to be relied upon should be admitted without the doctors having to give evidence orally and subject themselves to cross-examination pursuant to section 23 of the Criminal Appeal Act 1968. Realistically, it is evidence which was not available when the case was tried for the reasons which are apparent from our chronology. Furthermore, the interests of justice, as it seems to us, require that that evidence should now be admitted and that regard should be had to it.
20. The admission of the evidence, at this stage in the form of reports, plainly opens up a

defence not advanced at trial, namely diminished responsibility, and it also has a potential impact upon the defence which was advanced at trial, namely provocation.

21. We, in our judgment, do not need to hear the evidence orally from those who have written the reports in order to conclude at this stage that the conviction of murder can no longer be regarded as safe. The issue of diminished responsibility was simply not raised before the jury and the jury did not have the fresh evidence available to them. Had they had it, we do not know what their conclusion would have been, so we quash the conviction of murder and we order that there be a re-trial, at such trial centre as the presiding judges of the Midland Circuit may direct. A fresh indictment must be preferred and the appellant must be arraigned thereon within two months. Meanwhile, he must remain in custody. For the purposes of re-trial, we authorise the use of public funding to ensure that he is represented by counsel and solicitor.
22. There may, we recognise, be an issue as to fitness to plead and stand trial, but that is not a matter for further consideration by us today.
23. MR GLEDHILL: My Lord, I am much grateful for that decision. There is one further matter that is in front of the court, but it is a matter which is in front of the court in a form which frankly does not make sense for the court to make a ultimate decision on it pending the re-trial, and may I make plain that I can have no objection to the ordering of a re-trial, I know it is a matter for the court's discretion.
24. LORD JUSTICE KENNEDY: I had assumed that from the exchanges we had had before.
25. MR GLEDHILL: Yes, plainly the interests of justice require it. In relation to the sentence matter which is pending and is at the leave stage only, my application is that that simply be adjourned pending the outcome, but --
26. LORD JUSTICE KENNEDY: That, if I may help you, Mr Gledhill, is our present view, subject to anything Mr Parker may wish to say, but we would not wish to make it open-ended because of the difficulties in the present case. Can I put to you this possibility, that it might be adjourned until, say, a date at the end of 2004 so as to give an opportunity for it to be brought back into the list should it be necessary.
27. MR GLEDHILL: My Lord, that would be right. Can I make plain this. If, in the course of the re-trial, there is a finding of unfitness to stand trial and a finding that the actus reus was committed, then of course the only sentence that the court can impose is one of an admission order. The question which might arise at that stage is whether an admission order can be made when a defendant is subject to life imprisonment pursuant to another matter, so it may be that the matter has to come back to the court during the course of that other matter.
28. LORD JUSTICE KENNEDY: I think that is obviously a possibility. It seems to us at the moment sufficient to say you should not deal with it today.
29. MR GLEDHILL: No.
30. LORD JUSTICE KENNEDY: Mr Parker, do you dissent from that proposition? I do not know whether you are instructed on this matter.
31. MR PARKER: I am not instructed. The outcome of that appeal could affect, or might affect, how the re-trial progresses. I do not know whether the psychiatrists will get together and speak. I can obviously consider whether it is in all these circumstances appropriate to

consider manslaughter on the basis of provocation assuming an explosive personality disorder is something which the reasonable man should be clothed with, to use the old language. Knowing where he is is something that can affect that decision, so from a personal point of view, and I appreciate I really have no locus on it, I do not see any reason why that should be held up.

32. LORD JUSTICE KENNEDY: Mr Gledhill, what I said when delivering judgment was representation by counsel and solicitor. At this stage I rather assumed that you would be dealing with it yourself.
33. MR GLEDHILL: I doubt it somehow --
34. LORD JUSTICE KENNEDY: If it is not you dealing with it yourself and there is an application for leading counsel, it should be addressed to the Registrar and be dealt with in that way.
35. MR GLEDHILL: My Lord, yes. I will make sure that that is done.
36. LORD JUSTICE KENNEDY: At the moment it is simply you and those instructing you.
37. MR GLEDHILL: My Lord, one final matter. Could I just ask the court's indulgence for the court to indicate that whilst a re-trial has been ordered, and of course the course of that must be followed, that should not in any sense inhibit the Home Secretary's exercise of his powers under section 47 of the Mental Health Act to transfer Mr Samra to Rampton Hospital pending what happens in the course of the re-trial.
38. LORD JUSTICE KENNEDY: That would certainly be our view, and if it is any help for us to say it, we do.
39. MR GLEDHILL: I suspect it may be of some help for your Lordships to say that.
40. LORD JUSTICE KENNEDY: The second matter concerning this appellant arises out of a plea of guilty tendered by him on 11th June 2001 to a count of false imprisonment. He, having pleaded guilty, was sentenced on 27th March 2002 to life imprisonment.
41. The facts relating to this matter arose out of what happened between 23rd and 25th December 2000, when the appellant took and held captive a prison officer, Julie Connolly, for a period of 42 hours.
42. The application for leave to appeal against sentence was refused by the single judge and has been renewed. It is agreed by counsel before us that it would be inappropriate at this stage to deploy that renewed application, and that is our view. There may be information yet to become available which would have a bearing on the renewed application. However, if the application is not listed for renewal before 31st December 2004 it will be dismissed.
43. LORD JUSTICE KENNEDY: Mr Gledhill, you can see the effect of that, it really puts the burden on you and those instructing you, if they wish to be matter to be heard, to have it put into the list. If the situation arises where frankly it is academic, if they do nothing the decision will take effect automatically.
44. MR GLEDHILL: My Lord, yes. The one ancillary matter relating to that is that the representation order that covers leave to appeal was limited to drafting the grounds of appeal

and any further matters were left to this court.

45. LORD JUSTICE KENNEDY: At this stage we cannot extend it, but the reality is that the appellant is represented for another purpose, and I cannot believe that the matter will fall by neglect.
46. MR GLEDHILL: I am sure it will not. I will remain instructed on that aspect unless other arrangements are made.
47. LORD JUSTICE KENNEDY: Thank you very much. Is there any further assistance that either of you require from this court today?
48. MR GLEDHILL: No, thank you.
49. MR PARKER: No, thank you very much.